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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 548 (PAC)

5 JOSHUA ADAM SCHULTE,

6 Conference

7 Defendant.

8 -----x
9 New York, N.Y.
10 May 11, 2018
10:00 a.m.

11 Before:

12 HON. PAUL A. CROTTY,

13 District Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN
16 United States Attorney for the
17 Southern District of New York
18 MATTHEW J. LAROCHE
19 SIDHARDHA KAMARAJU
Assistant United States Attorneys

20 DAVID E. PATTON
21 Federal Defenders of New York, Inc.
Attorney for Defendant
22 SABRINA P. SHROFF

23 Also Present: Michael Chang-Frieden
24 Hannah Sotnick
25 Jason Fischer

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(Case called)

THE COURT: Good morning. Please be seated.

MR. LAROCHE: Good morning, your Honor. Matt Laroche and Sidhardha Kamaraju, for the government, and with us is Michael Chang-Frieden, a paralegal from the U.S. Attorney's Office.

THE COURT: Good morning.

MS. SHROFF: Good morning, your Honor. On behalf of Josh Schulte, who is seated on my left, Federal Defenders of New York, by Sabrina Shroff.

THE COURT: Good morning, Ms. Shroff.

MS. SHROFF: Good morning, your Honor.

With me at counsel table is Hannah Sotnick -- she's a paralegal in my office -- and Mr. Jason Fischer, who is in charge of all things electronic at the Federal Defenders. Since this case raises issues that involve so many different expertise, they are here, and I ask the Court to allow them at counsel table.

THE COURT: Sure.

MS. SHROFF: Thank you.

THE COURT: Ms. Shroff, you came into this case on March 15.

MS. SHROFF: Yes, your Honor.

THE COURT: At that time, you asked for 30 days.

MS. SHROFF: Yes, your Honor.

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1 THE COURT: You were on trial for the last several
2 weeks.

3 MS. SHROFF: I have been on trial, your Honor.

4 THE COURT: OK.

5 MS. SHROFF: I'm done now.

6 THE COURT: Are you up to speed now in the case?

7 MS. SHROFF: I'm getting up to speed, your Honor, and
8 I can update the Court as to where we are.

9 I think I've finally gotten to a position where at
10 least most of the discovery is now available to Mr. Schulte.
11 Apparently it was not available to him at the MCC in a manner
12 that he could review it. Apparently he's still having trouble
13 with the viewing of the documents that are on the computer.

14 I think the government will correct me if I'm wrong,
15 but they are still anticipating producing for me a copy of the
16 server which is at issue in this case. The government informs
17 me that that production is voluminous and requires the Federal
18 Defenders to buy the computer for them, because the computer's
19 quite expensive. We plan to move forward with that and get
20 that discovery review started.

21 The government also tells me that they are not yet
22 ready, and I'm going to ask the Court for some relief on this
23 point, in terms of superseding Mr. Schulte with the additional
24 charges that they've been talking about bringing.

25 Mr. Schulte in the meantime is continuing his

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1 discovery review along with us.

2 I would ask the Court, your Honor, to allow
3 Mr. Schulte to go to Virginia so that he can once and for all
4 resolve the Virginia state case, which seems to be just sort of
5 pending and being held against him. If Virginia wants to bring
6 charges or pursue those charges, they should pursue them now
7 rather than wait until this case is resolved, because it's
8 standing in the way of Mr. Schulte's being able to argue to the
9 Court that the Virginia case does not matter.

10 If Virginia wants to move forward, they should move
11 forward. Or if they choose not to move forward, this Court
12 should consider at least that case to be weak or dismissed, but
13 it seems unfair to Mr. Schulte to have this Virginia matter
14 pending, so I've asked Mr. Laroche, and he has kindly agreed,
15 to put me in touch with the state authorities so that we can
16 make progress on that front as well.

17 I think from my point of view, I've brought the Court
18 up to speed. I think we're now really waiting on the
19 government, so if the Court still wants to set some deadlines
20 there, that might give us all some sense of where we're going
21 and when.

22 THE COURT: All right. Mr. Laroche.

23 MR. LAROCHE: Thank you, your Honor.

24 With respect to discovery, to be clear, defense
25 counsel has access to all of the discovery with respect to the

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1 child pornography case. That includes access to the server
2 that Ms. Shroff just noted.

3 Now, with respect to Mr. Schulte, the government has
4 provided a substantial amount of the discovery -- the
5 electronic discovery -- in the case to Mr. Schulte. We were
6 notified today that he's having issues viewing some of that
7 discovery. We believe we'll be able to provide him with a
8 necessary laptop that will solve that problem. We just learned
9 of it today, and we'll address it as soon as we can.

10 There's also a separate issue with the server, which
11 is a significant amount of electronic evidence that Mr. Schulte
12 does not yet have access to at the MCC.

13 THE COURT: Now, whose server is this?

14 MR. LAROCHE: We executed a search warrant on
15 Mr. Schulte's residence last year. It is Mr. Schulte's server.
16 He had a very large server in his residence that had a very
17 substantial amount of data.

18 THE COURT: And who has that server? You have the
19 server now?

20 MR. LAROCHE: We have the server in our possession.
21 That's correct, your Honor. And we made a forensic copy of
22 that server and provided it to defense counsel.

23 THE COURT: So Ms. Shroff has that.

24 MR. LAROCHE: Ms. Shroff has it, yes.

25 THE COURT: But Mr. Schulte has difficulty accessing

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1 it.

2 MR. LAROCHE: Mr. Schulte cannot yet access it.

3 We notified Ms. Shroff, and this is what she was
4 referring to about a very expensive computer, because of the
5 nature of the server and how it was set up, it requires
6 specialized software and a specialized server to be able to run
7 it. You would not simply be able to plug it into a regular old
8 computer and be able to look at it.

9 We provided that information to Ms. Shroff several
10 weeks ago. We're still discussing that with her as well as
11 with her technical folks to make sure that they can get the
12 necessary equipment so that he would be able to use it.

13 From the government's perspective, with respect to the
14 child pornography case, the key evidence is what was recovered
15 from his desktop computer, and that's where all the child
16 pornography was recovered from. That desktop computer is
17 available to review at the SCIF at this courthouse. Because it
18 contains child pornography, Mr. Schulte cannot be provided a
19 copy, and it must be reviewed in a secure location. Now,
20 that's been available to defense counsel since she came on the
21 case.

22 Those are the discovery issues we're working through.
23 We're working to get Mr. Schulte access as quickly as possible
24 and will continue doing that.

25 With respect to additional charges in this case --

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1 THE COURT: The superseder, yes.

2 MR. LAROCHE: The superseder, that's correct, your
3 Honor.

4 As the Court is aware, this case -- the
5 investigation -- started not as a child pornography
6 investigation but a broader investigation that's been referred
7 to during court. The government is moving as quickly as
8 possible to try to get to a superseder in this case, and we are
9 anticipating that there will be a superseder. Because of the
10 nature of the underlying investigation, that requires
11 consultation with people outside of our office, which we are
12 doing as quickly as we can. We're trying to get that done.

13 THE COURT: Can you put a time frame on this,
14 Mr. Laroche?

15 MR. LAROCHE: We are hopeful that we will get this
16 done within the next 45 days. That's our hope. We're moving
17 as quickly as we can to get that done, and as I said, we're
18 consulting with a lot of folks that are not within our office,
19 so we're moving as quickly as we can on that front.

20 With respect to Virginia, the last issue raised by Ms.
21 Shroff, as we had informed the Court several court appearances
22 ago, Virginia is taking the position that since our case is
23 proceeding first, they do not want to writ Mr. Schulte back
24 down to Virginia to proceed on that case when it's our position
25 that this federal case should go first.

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1 That's the only update I have with respect to that
2 case, and that's the status of this case from the government's
3 perspective.

4 THE COURT: So your answer on the Virginia case is
5 that you're not going to do anything.

6 MR. LAROCHE: We will certainly contact Virginia again
7 and put Ms. Shroff in contact with Virginia, but we've had
8 extensive discussions with Virginia about that case. They are
9 taking the position that they do not want to take the step of
10 writ'g him out of federal custody to go down to proceed on the
11 state case, because we are taking the position, and I think
12 rightfully so, that because we charged our case first, it
13 should proceed first.

14 THE COURT: Ms. Shroff, what's my jurisdiction over
15 Virginia? I don't have jurisdiction, do I?

16 MS. SHROFF: You don't.

17 THE COURT: So how could I possibly implement your
18 request?

19 MS. SHROFF: That's what I'm saying. I'm saying that
20 what the government is saying here is somewhat confusing.

21 They can go first whenever they want. They can go
22 first right now. But just as I'm listening to them, and I want
23 to be clear about certain things. OK?

24 First of all, I'm not imputing any delay to the
25 government about the discovery production. Part of the

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1 discovery delay has to do with the fact that prior counsel
2 didn't really get MCC up to speed on what was needed, so that's
3 the defense's side of the problem. Then, of course, there was
4 the problem where I was on trial, so that kind of slowed things
5 down. Then they had to upgrade my clearance, which I did last
6 week, and so we're up to speed there. But if Virginia is part
7 of the piece that has gotten Mr. Schulte remanded, and Virginia
8 is not willing to move forward, that seems unfair to
9 Mr. Schulte.

10 Now, I want to be clear, the Court may say Virginia
11 was irrelevant to my decision to remand and that may still be
12 true, but Virginia state cannot say, Hey, I'm just going to sit
13 back and not writ him over because your case goes first.

14 We have state court writs going back and forth all the
15 time. If Mr. Schulte is willing to go to Virginia, take care
16 of his Virginia case and come back, and certainly Mr. Laroche
17 is not going to do anything at least for the next 45 days, I
18 see no reason for the government to say that Mr. Schulte should
19 be sitting at the MCC and not be allowed to go to Virginia.

20 Virginia should either move on the case, dismiss the
21 case or prosecute the case. Virginia can't have its cake and
22 eat it too. That's my point with Virginia. All I'm telling
23 this Court is this is an open record. Virginia has its time
24 frame from which to go to trial on the state case. Mr. Schulte
25 is ready to proceed to Virginia, and Virginia should be on

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1 notice. I intend to contact Virginia and tell them to move,
2 prosecute or dismiss, so that's Virginia.

3 I understand you have no authority.

4 THE COURT: All right. So I really am an observer on
5 Virginia.

6 MS. SHROFF: Exactly, just a fair observer. I want to
7 put that out there. That's No. 1.

8 No. 2, I just want to make sure, I do not know what
9 charges they want to bring. They keep talking about these
10 charges. Are they secret charges that I'm not even allowed to
11 know about? What are these charges? Could somebody just
12 please tell me what these charges are?

13 Mr. Laroche, could you tell us what these charges are?

14 THE COURT: I don't know if he has to inform you of
15 the charging decision, but Mr. Laroche, what do you have to
16 say?

17 MR. LAROCHE: We've had discussions with Ms. Shroff
18 about this in the past. It's an ongoing grand jury
19 investigation, and I don't think we have an obligation to
20 disclose that at this time, but we certainly have had
21 discussions with Ms. Shroff about the nature of the underlying
22 investigation.

23 THE COURT: And the underlying investigation is going
24 to result in action by, you said, within 45 days, Mr. Laroche?

25 MR. LAROCHE: That's what we anticipate, your Honor.

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1 THE COURT: That would be around the 1st of July?

2 MR. LAROCHE: That's correct.

3 THE COURT: All right.

4 MS. SHROFF: Mr. Schulte has been under indictment, as
5 I understand it, or at least under arrest, since August of
6 2017. I came in late, so I want to make sure my dates are not
7 wrong.

8 I'm not asking Mr. Laroche or the government to tell
9 me what it is they're doing in the grand jury. But surely
10 telling me that they're going to investigate him or charge him
11 with, I don't know, an 18 U.S.C. 371 violation -- or are they
12 charging him with sedition? Are they charging him with
13 espionage? I'd like to know generally out loud what
14 Mr. Schulte is being charged with. I don't think it should be
15 a secret what he's being charged with. That's No. 2.

16 And August of 2017, we're almost at -- look, I'm not
17 pushing this, because I'm behind in my review, so I want to be
18 candid with the Court, but I doubt it's fair to Mr. Schulte to
19 first proceed on a child pornography trial and then proceed on
20 a second trial when the evidence of the two is clearly
21 interlinked, as is the motion practice. Basically we're just
22 spinning our wheels here.

23 I ask the Court most respectfully to set a deadline.
24 Either they supersede or they're done. I'm not asking the
25 Court a week or a month, but it's been since August.

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1 THE COURT: Ms. Shroff, I'm not going to do that. I'm
2 going to encourage them to act as quickly as possible, and 45
3 days seems like a reasonable target. That'd bring us to the
4 first week in July. I'll ask Mr. Laroche to use his best
5 efforts to come to conclusion by that time, but it's not going
6 to come to conclusion or face dismissal or face prevention of a
7 superseder. I'm not going to do that.

8 MS. SHROFF: Look, I understand that, your Honor.

9 I'm just keeping the Court in mind the date is not 45
10 days from today. Right? This has been going on for a while,
11 and we've been at this August of 2017. Let's be generous to
12 the government. Let's say it's been at this since January of
13 2018. We're still five months into 2018; 45 days is fine, 45
14 days I have no trouble with. But if the 45 days comes back and
15 we're still looking for 45 days more, I'm just asking the Court
16 to keep that in mind.

17 THE COURT: We'll cross that bridge when we come to
18 it.

19 MS. SHROFF: Thank you, your Honor.

20 THE COURT: Do you have any objections or comments on
21 Mr. Laroche's suggestion that with regard to the child
22 pornography, you've got the desktop computer and you have
23 access to all the information that you need?

24 MS. SHROFF: No, no. I never had an issue with that.
25 He's correct. Judge, I'm not saying any of the delay came from

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1 the government on the discovery at all.

2 THE COURT: I'm not talking about delay now. I'm
3 talking about access. You have access.

4 MS. SHROFF: I have access. I have access to the
5 SCIF. Mr. Schulte doesn't have access.

6 THE COURT: Right. We're working on that with
7 Mr. Schulte, right?

8 MS. SHROFF: No. I think Mr. Laroche's position is
9 that Mr. Schulte will never see that evidence.

10 MR. LAROCHE: That is not correct.

11 THE COURT: I didn't understand that.

12 Mr. Laroche.

13 MR. LAROCHE: Your Honor, I'm sorry.

14 MS. SHROFF: If it's in the SCIF, how is he going to
15 see it?

16 MR. LAROCHE: Obviously in child pornography cases,
17 the defendant has the ability to be able to look at the
18 evidence against him. We can have discussions with defense
19 counsel about exactly how that would look. The government is
20 certainly not taking the position now that the defendant cannot
21 have access to the evidence that will be used against him. I
22 think we'll just have to work out those issues with counsel,
23 and I propose that Ms. Shroff and I just have those
24 conversations. And if there are any issues on that front, we
25 can raise them with the Court.

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1 MS. SHROFF: OK. Then I misunderstood. I thought
2 Mr. Schulte would not have access to what was in the SCIF. I
3 apologize to Mr. Laroche.

4 THE COURT: All right.

5 MS. SHROFF: That's fine. We can work things out. I
6 think on discovery the government and I will be able to work
7 out almost everything. I don't anticipate having trouble with
8 them in working out access to discovery. I think we'll be
9 fine.

10 I'm more concerned about Virginia and more concerned
11 about whether or not the superseder will show up in 45 days.

12 THE COURT: When would it be prudent for us to get
13 together again? I would suppose the first week in July.

14 MR. LAROCHE: Sounds right, your Honor.

15 THE COURT: Ms. Shroff.

16 MS. SHROFF: Whatever date the government wants so
17 they have their full 45 days.

18 THE COURT: Why don't we schedule something in the
19 week of the 9th of July.

20 THE DEPUTY CLERK: Tuesday, July 10, at 4:30.

21 THE COURT: All right.

22 MS. SHROFF: July 10 at 4:30, your Honor?

23 THE COURT: July 10 at 4:30.

24 MS. SHROFF: That's fine, your Honor.

25 THE COURT: We'll get an update on the status then.

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1 In the meantime, Mr. Laroche and Ms. Shroff will meet to work
2 out any further details that are necessary so that there's no
3 hitch in discovery and everybody has access to the discovery in
4 the child pornography case. We'll hear from Mr. Laroche on
5 where he stands with the superseder on July 10 at 4:30.

6 You're going to pursue your case in Virginia, Ms.
7 Shroff, and you'll be in a position to report on that on July
8 10?

9 MS. SHROFF: Yes, your Honor.

10 THE COURT: OK.

11 MS. SHROFF: Thank you.

12 THE COURT: Anything else, Mr. Laroche?

13 MR. LAROCHE: Your Honor, the government moves to
14 exclude time from today until July 10 in the interest of
15 justice, under the Speedy Trial Act, and basis for the
16 exclusion is so that defense counsel can continue reviewing
17 discovery in this case.

18 MS. SHROFF: Your Honor, may I just have one second?

19 THE COURT: Yes.

20 MS. SHROFF: Thank you.

21 We have no objection to the exclusion of time, your
22 Honor.

23 THE COURT: The time between now and July 10 will be
24 excluded. It's in the interest of justice to do so. The
25 interests cited outweigh the interests of the public and the

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1 defendant in a speedy trial.

2 See you on July 10. If you need intervention or a
3 conference before then, let me know. I'll be in New York.

4 MR. LAROCHE: Thank you, your Honor.

5 MS. SHROFF: Thank you, your Honor.

6 THE COURT: Thank you very much.

7 (Adjourned)